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Allocation of Costs Associated with LEC Provision of Video Programming Services	)))	CC Docket No. 96-112

REPLY COMMENTS OF SPRINT CORPORATION

The Sprint Local Telephone Companies ("Sprint") hereby reply to comments filed in response to the Commission's May 10, 1996 Notice of Proposed Rulemaking ("NPRM") in the above-captioned docket.

In the NPRM the Commission sought comment on its proposed changes to the Part 64 Rules (47 CFR Part 64) that would establish specific methods to allocate costs between regulated telephony and nonregulated video (as well as other future nonregulated services) when an Incumbent Local Exchange Carrier ("ILEC") provides video over facilities used to provide telephony. Among other proposals, the Commission proposed adopting a fixed factor allocator for loop plant.

In its Comments, Sprint argued that the proposed changes were unwarranted because there was no evidence to suggest that the existing Part 64 rules and other regulatory safeguards are inadequate to address the ILEC provision of video programming as cable operators. Sprint further argued that the proposed changes

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were contrary to the competitive goals of the 1996 Act[1] because the changes, if adopted, would unduly favor incumbent cable operators.

Nothing in the comments has caused Sprint to change its views in this regard. The record does not establish that the proposed changes are warranted; to the contrary, the record supports Sprint's position that the proposed changes are unwarranted. The comments fail to address how the proposed changes will further the Commission's and the Act's competitive goal. Rather, the comments demonstrate the validity of Sprint's concerns with the anticompetitive effect of the proposed changes.

Various members of the cable industry submitted comments. They primarily argue that ILECs are constructing hybrid fiber/coaxial cable ("HFC") facilities for the joint purpose of providing regulated telephony and nonregulated video services.[2] They also argue that the sole reason to install HFC facilities is to provide video and other nonregulated services and that the Commission should adopt a fixed factor allocator of at least 75% to allocate loop plant costs to nonregulated services. For example, the National Cable Television Association, Inc. ("NCTA")

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1. Telecommunications Act of 1996, Pub. L. No. 104-104, 101 Stat. 56 (1996).

2. See, e.g., Comments of Continental Cablevision, Inc. ("Continental") at p. 4: "Continental's comments are focused on the issue of cost causation as derived from its actual operation of HFC networks, the kind most telephone companies are constructing for the dual purposes of carrying regulated and nonregulated services."

recommends "allocating 25% of common costs to the provision of regulated telephone service and 75% of common costs to the provision of video services."[3] Continental takes the argument even further and states that in connection with a joint-use HFC facility "telephone services occupy less than 5% of system capacity."[4]

These arguments are flawed in several respects. First, the cable parties provide no hard data to support their claims that a fixed factor of at least 75% is reasonable or that HFC joint-use facilities will be primarily devoted to nonregulated services. For example, Continental bases its arguments on its initial experience in constructing a joint-use HFC facility in Australia with an alternative long distance carrier,[5] but makes no effort to demonstrate the validity of its comparison of the Austrailian network with that of a U.S. ILEC. NCTA submits a study by Leland Johnson to support its arguments in favor of a fixed factor allocator.[6] However, the only "hard" data used stems from an analysis of costs from a Bell Atlantic Video Dialtone ("VDT")

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3. NCTA at p. 17. NCTA also suggests that "Indeed, in some circumstances even a 100 percent allocation to video would be insufficient to prevent cross-subsidization." (NCTA at p. 15) The suggestion -- on its face -- is without merit.

4. Continental at p. 3.

5. Id. at p. 4.

6. Allocating Common Costs to Avoid Cross-Subsidy and Enable the Sharing of Benefits, Leland L. Johnson, Attachment I to the Comments of the NCTA.

trial. However, it is impossible to tell whether the numbers used represent embedded cost or long run incremental cost or some other cost methodology. The study consists largely of hypothetical and unsupported assumptions -- that by their very nature could be used to support practically any claim that its proponent desires. The study should be afforded no consideration.

The problem -- at least in part -- stems from the lack of any reliable data because there is no real experience upon which to base reasonable conclusions. ILEC provision of video just has not happened yet in any meaningful sense. VDT never survived its infancy; few VDT applications ever extended beyond the trial stage. More importantly, the use of HFC facilities for joint-use purposes is barely in its infancy. Sprint has no such facilities in place that provide telephony and video services and "only about 1% of Bell Atlantic's network is fiber." Sprint is not suggesting that neither Sprint nor the rest of the ILEC industry plan to deploy HFC for joint-use facilities. Indeed the deployment of such facilities promise to help fulfill the Commission's and Congress' goal:

> to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans ....[7]

7. **NPRM** at para. 22 quoting the Joint Explanatory Statement Conference Report at 113.

In view of the lack of any "hard" data, Sprint believes that the regulations proposed by the Commission and the fixed factor allocator supported by the cable industry are arbitrary and could negatively impact ILEC deployment of advanced technologies, thereby thwarting the desire "to provide for a pro-competitive, **de-regulatory** national policy framework...."[8]

The argument of the cable industry is also flawed because it takes a one-sided view of competition. Continental claims that the Commission's proposal "will promote the critical goal of competitive equity."[9] However, the effect of the Commission's proposal and the arguments of the cable industry would actually have the opposite effect. The proposals will not merely foster cable entry into telephony by imposing unwarranted burdens on ILECs, but will actually unreasonably advantage the incumbent cable TV operators as they begin to offer telephony services and as ILECs enter the cable marketplace. In its comments, Sprint stated "in Sprint's view the proposed rules are inconsistent with the Commission's stated intent not "to protect competitors in video ...."[10] These concerns were also well stated by Broadband Technologies, Inc. ("BTI"):

> The Commission should also bear in mind that the LECs' primary competitors, cable TV operators also are planning to upgrade their networks to deliver telephone and video services on an integrated basis. Cable TV operators are not subject to cost allocation rules

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8. Id. [Emphasis added.]

9. Continental at p. 2.

10. Sprint's Comments at pp. 5-6.

> comparable to Part 64. They will not be required to reallocate the common costs of their networks to reflect joint use for telephone and video services, nor will they be obliged to reduce cable TV service rates to reflect such a reallocation. The LECs should not be put at a regulatory disadvantage relative to cable TV operators, just as the competitive market created by the Telecommunications Act begins to take hold.[11]

Finally, the cable industry arguments are flawed because they suggest that new cost allocations rules are necessary to protect telephone ratepayers from high prices that subsidize nonregulated services. The cable industry completely ignores the Price Cap regime and the role that price regulation plays in minimizing cross-subsidies. Sprint stands by the case it made in its Comments for price regulation as an effective deterrent and will not belabor the record by restating these arguments here.[12] Suffice it to say that price regulation coupled with the existing Part 64 rules and the Cost Allocation Manual and ARMIS filing requirements are effective tools to ensure that the ILEC have little, if any, incentive to cross-subsidize.[13]

The cable industry reliance on onerous cost allocation rules also ignores the positive effect on pricing that competition should bring. As BTI states:

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11. BTI at p. 5.

12. Sprint Comments at pp. 4-5.

13. While Sprint believes price regulation is an effective deterrent to cross-subsidization abuses, Sprint does not share the view of U.S. West and other ILECs that because of Price Cap regulation Part 64 may be eliminated. See e.g., Comments of Bell Atlantic, Inc. at pp. 1-3 and Comments of United States Telephone Association at pp. 4-6.

> The Commission's primary purpose in this proceeding is to ensure that costs the LECs incur to provide unregulated services over integrated systems will be recovered from the LECs' "captive" telephone service customers. The entry of cable TV operators and other competitors into the local exchange services market will create a market-based solution to this danger. Once the LECs face effective competition for these regulated services, this will eliminate the last vestiges of their ability to cross-subsidize competitive services out of regulated revenues. Given that any cost allocation rules are "inevitably imperfect" and, thus, result in economic distortions, the Commission should avoid adopting complex and burdensome rules in this proceeding to address transitional issues that will be resolved, in the near future through market forces.[14]

While BTI's belief of competition controlling prices in the "near future" may be a stretch, the point is well taken that if the concern is prices then the focus should not be on imposing additional cost allocation regulations. Price regulation and the advent of effective facilities based competition are more effective means of protecting telephone ratepayers from unreasonably high rates.

14. BTI at p. 5.

Sprint opposes the proposed changes to Part 64.[15] The changes will not further the competitive, de-regulatory framework envisioned by Congress and there is nothing to suggest that the changes are necessary.

Respectfully submitted,

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June 12, 1996

15. While Sprint does not believe any new rules are necessary or desirable, if the Commission determines otherwise then Sprint urges the Commission to investigate AT&T's proposal to use TSLRIC cost studies to allocate investment. Sprint believes that the proposal, while needing further investigation, offers promise of being reasonable and administratively simple, without imposing onerous new burdens. See, Comments of AT&T Corp. ("AT&T"), May 31, 1996 at pp.4-6.

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 12th day of June, 1996, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments of Sprint Corporation" in the Matter of Allocation of Costs Asociated with Local Exchange Carrier Provision of Video Programming Services, CC Docket No. 96-112, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

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